

CHAPTER 36

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CHAPTER 36

RULES OF THE GRIEVANCE COMMISSION

Rule 36.1 Grievance commission — clerk. The Grievance Commission of the Supreme Court of Iowa is hereafter referred to as the commission, and the members thereof are referred to as the commissioners. The assistant director for boards and commissions of the office of professional regulation shall serve as clerk for the grievance commission. The director of the office of professional regulation shall designate an assistant clerk for the grievance commission. In the chair's absence or inability to act, the vice chair shall perform all duties of the chair. *See* Iowa Ct. R. 35.1.

[Amendment by Court Order December 28, 1989, effective February 15, 1990; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005; December 5, 2007]

Rule 36.2 Grievance commission — divisions. The commissioners may act as a body or in such divisions as the chair may direct. Each division shall consist of five members. The personnel of each division shall be selected and designated by the chair for each complaint as required. The chair shall appoint one of said members to serve as president of said division. One additional member shall be selected as an alternate.

[Amendment by Court Order December 28, 1989, effective February 15, 1990; November 9, 2001, effective February 15, 2002]

Rule 36.3 Complaints — Iowa Supreme Court Attorney Disciplinary Board. Any complaint filed by the Iowa Supreme Court Attorney Disciplinary Board shall be filed in the name of the board as the complainant and against the attorney named in said charges as the respondent. The complaint and charges shall be prosecuted by the board before the commission until final disposition.

[Amendment by Court Order December 28, 1989, effective February 15, 1990; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005]

Rule 36.4 Complaints — filing — docketing. The clerk shall cause each complaint to be separately numbered and filed; and all subsequent motions, pleadings, orders or other related documents shall be made part of such file. The clerk shall also provide for a permanent docket to be kept as required by Iowa Ct. R. 35.5. All complaints filed by or on behalf of the board shall be docketed therein, and such file and docket shall be kept in substantially the same manner as the records relating to civil actions in district court.

[Amendment by Court Order December 28, 1989, effective February 15, 1990; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005]

Rule 36.5 Report of filing. The clerk shall report the filing of each complaint to the chair of the commission, who shall by written order direct that the complaint be heard by the commission as a whole or a specified division thereof.

[Amendment by Court Order December 28, 1989, effective February 15, 1990; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005]

Rule 36.6 Notice.

36.6(1) Upon the filing of such complaint, the clerk of the grievance commission shall serve a written notice thereof with a copy of the complaint and copies of chapters 35 and 36 of the Iowa Court Rules upon the respondent.

36.6(2) The clerk may serve notice of the complaint by personal service in the manner of an original notice in civil suits or by restricted certified mail to the respondent's last address as shown by records accessible to the court. The notice shall also notify said respondent to file a written answer to the complaint within 20 days after completed service of the notice. Written return of service shall be made by the person making the service if by personal service, or by the clerk with postal receipts attached to the return if by restricted certified mail, and such return of service shall be filed in the cause. Service shall be deemed complete on the date of personal service or date shown by the postal receipt of delivery of said notice to the respondent or refusal of the respondent to accept delivery. The notice shall be deemed sufficient if it substantially complies with the form that accompanies these rules.

36.6(3) If service cannot be obtained pursuant to rule 36.6(2), the clerk of the grievance commission may serve notice of the complaint on the clerk of the supreme court who is appointed to receive service on behalf of lawyers subject to Iowa's disciplinary authority. Iowa R. Prof'l Conduct 32:8.5 cmt. [1]. Service upon the clerk of the supreme court is deemed to be completed service of the notice on the respondent. Simultaneously with serving notice on the clerk of the supreme court, the clerk of the grievance commission shall forward the notice and a copy of the complaint to the respondent by restricted certified mail to the respondent's last address as shown by records accessible to the court. The notice shall notify said respondent to file a written answer to the complaint within 20 days after completed service of the notice. The clerk shall file with the clerk of the supreme court an affidavit attesting that notice was sent to the respondent by restricted certified mail.
[Amendment by Court Order November 20, 1981; December 28, 1989, effective February 15, 1990; December 15, 1994, effective January 3, 1995; February 19, 2001; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005]

Rule 36.7 Answer. The respondent shall file a written answer to the complaint within 20 days from the completed service of notice. For good cause shown upon written application, the grievance commission may grant an extension of time for filing an answer. If the respondent fails or refuses to file such answer within the time specified, the allegations of the complaint shall be considered admitted, and the matter shall proceed to a hearing on the issue of the appropriate sanction.
[Amendment by Court Order December 28, 1989, effective February 15, 1990; January 5, 2001; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005]

Rule 36.8 Hearing. The chair of the commission, or the president of any division to which a complaint has been referred, shall direct a hearing to be held upon the complaint within a reasonable time in the county of the respondent's residence or, at the discretion of the chair, within any other judicial district as shall most nearly serve the convenience of the parties and shall designate by written order the time and place for the hearing. The clerk shall mail a copy of the order to all parties and attorneys at least ten days before the date set for the hearing. If the respondent files written objections to hearing the complaint in the county of the respondent's residence, the hearing shall be held at such other place as the chair or division president shall direct by written order, in which case a new notice shall be given.
[Amendment by Court Order December 28, 1989, effective February 15, 1990; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005]

Rule 36.9 Continuances. A hearing shall not be continued except for good cause. Except in case of emergency, any motion for continuance shall be filed at least seven days before the day of hearing. Any objections to continuance shall be filed promptly.
[Amendment by Court Order December 28, 1989, effective February 15, 1990; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005]

Rule 36.10 Oaths. Any member of the grievance commission is hereby empowered to administer oaths or affirmations to all witnesses and shall cause such testimony to be officially reported by a court reporter.
[Amendment by Court Order December 28, 1989, effective February 15, 1990; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005; February 20, 2012]

Rule 36.11 Filing of documents. All answers, motions, applications, petitions, and pleadings in connection with a complaint shall be filed in duplicate with the grievance commission clerk's office in Des Moines, Iowa. The clerk shall prepare and mail copies to the respondent, the chair of the board, attorneys of record, and to the chair of the commission if sitting as a whole, or to the president of a division of the commission to whom such complaint has been referred. On and after the day fixed for hearing, such papers may be filed in duplicate with the chair of the commission or the president of the division, who shall notify all parties and attorneys of the filing and a copy shall be filed with the clerk.
[Amendment by Court Order December 28, 1989, effective February 15, 1990; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005]

Rule 36.12 Request for hearing — preliminary matters. If prompt written request is filed by or on behalf of any party for a hearing upon any preliminary motion or application filed in connection with a complaint, the chair of the commission sitting as a whole or the president of the division to whom such complaint has been referred shall by written order fix a time and place of hearing upon such motion or application and shall notify all parties and attorneys. After such hearing or if none is requested, the chair or president of a division, as the case may be, or any member of the commission or division designated by the chair or president, shall file a written ruling upon such motion or application, and thereafter all parties shall promptly comply with the ruling's terms and conditions.

[Amendment by Court Order December 28, 1989, effective February 15, 1990; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005]

Rule 36.13 Challenge regarding impartiality — four member divisions. Within the time allowed for filing an answer to the complaint, the respondent may challenge the impartiality of any member of the commission or division by filing a motion setting forth the grounds therefor. Said motion shall be disposed of as provided in rule 36.12. If the challenge is sustained, the vacancy thus created shall be filled as provided in rule 36.16.

With the consent of the complainant and the respondent, a division of the grievance commission may consist of four members. In the event the four-member division is evenly divided between a recommendation of sanction and dismissal, the division shall enter a dismissal of the complaint pursuant to the provisions of Iowa Ct. R. 35.9. Upon such dismissal, the complainant may apply for permission to appeal pursuant to Iowa Ct. R. 35.11.

[Amendment by Court Order December 28, 1989, effective February 15, 1990; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005]

Rule 36.14 Conduct of hearing.

36.14(1) At the time and place fixed for the hearing upon any complaint, the commission or division shall proceed to hear the evidence, briefs of authorities and arguments. The hearing shall not be open to the public.

36.14(2) The respondent may present character evidence by sworn affidavit, which shall be filed as part of the respondent's exhibits. The affidavit shall be admitted into evidence unless the complainant indicates, at least three days prior to the scheduled hearing date, that it intends to cross-examine the affiant. In such case, the affidavit shall not be received into evidence, and the affiant shall testify in the manner of all other witnesses. The respondent may similarly offer the character evidence of a subpoenaed judge by sworn affidavit, subject to the same constraints if the complainant timely indicates its intention to cross-examine the affiant judge. All other witnesses shall testify at the hearing after administration of an oath or affirmation by a member of the grievance commission or other person authorized by law to administer oaths, and their testimony shall be taken in writing by a duly qualified reporter.

36.14(3) The respondent may defend and shall have the right to participate in the hearing in person and by counsel, to cross-examine, to be confronted by witnesses, and to present evidence in accordance with the Iowa Rules of Civil Procedure and the Iowa Rules of Evidence.

36.14(4) The presentation of evidence shall conform to the Iowa Rules of Civil Procedure and the Iowa Rules of Evidence. All questions of procedure, including objections to evidence, shall be determined by the chair of the commission or president of the division.

[Amendment by Court Order December 28, 1989, effective February 15, 1990; November 9, 2001, effective February 15, 2002; January 24, 2003; April 20, 2005, effective July 1, 2005]

Rule 36.15 Action upon complaint — report of decision. At the conclusion of a hearing upon any complaint against an attorney, the commissioners are empowered to dismiss the complaint, issue a private admonition, or recommend that the supreme court reprimand the respondent or suspend or revoke the respondent's license. If the commissioners recommend a reprimand, suspension, or revocation, they shall file with the supreme court clerk a report of their findings of fact, conclusions of law, and recommendations within 30 days of the date set for filing of the last responsive brief and argument. As part of its report, the commission may recommend additional or alternative sanctions such as restitution, costs, practice limitations, appointment of a trustee or receiver, passage of a bar examination or the Multistate Professional Responsibility Examination, attendance at continuing legal education courses, or other measures consistent with the purposes of attorney discipline. The report shall contain a proof of service showing it was served upon the respondent as provided in Iowa R.

App. P. 6.31. The matter shall then stand for disposition in the supreme court.

Any commissioner has the right to file with the supreme court clerk a dissent from the majority determination or report. The clerk shall promptly cause a copy of a dissent to be served on the respondent.

If the commissioners dismiss the charges, no publicity shall be given to any of the proceedings except at the request of the respondent. All reports and recommendations of the commissioners shall be concurred in by at least 3 members of the division or at least 12 members of the commission, as the case may be, all of whom shall have been present throughout the proceedings.

[Amendment by Court Order December 10, 1982; July 18, 1983; December 28, 1989, effective February 15, 1990; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; August 28, 2003; April 20, 2005, effective July 1, 2005]

Rule 36.16 Substitutions and vacancies. In case of the absence or inability of the chair and vice chair of the commission sitting as a whole to perform any of the duties provided for herein, said commission may designate some other member as acting chair to perform such duties. In case of the absence or inability of the president of a division to perform any of the duties provided for herein, said division may designate some other member thereof as acting president to perform such duties. If a vacancy occurs in any division from any cause, the same shall be filled by the chair, vice chair or acting chair of the commission.

[Amendment by Court Order December 28, 1989, effective February 15, 1990; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005]

Rule 36.17 Harmless error — substantial prejudice test. An omission, irregularity, or other defect in procedure shall not render void or ineffective any act of the commission or a division or any member thereof unless substantial prejudice is shown to have resulted.

[Amendment by Court Order December 28, 1989, effective February 15, 1990; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005]

Rule 36.18 Confidentiality.

36.18(1) All records, papers, proceedings, meetings, and hearings of the commission shall be confidential, unless the commission recommends that the supreme court reprimand the respondent or suspend or revoke the respondent's license.

36.18(2) If the commission recommends that the supreme court reprimand the respondent or suspend or revoke the respondent's license, the commission's report of reprimand or recommendations for license suspension or revocation shall be a public document upon its filing with the clerk of the supreme court. In addition, if the commission recommends the supreme court reprimand the respondent or suspend or revoke the respondent's license, the complaint filed with the commission by the Iowa Supreme Court Attorney Disciplinary Board shall become a public document.

36.18(3) Any other records and papers of the commission concerning any complaint shall remain privileged and confidential and are not subject to discovery, subpoena, or other means of legal compulsion for their release to a person other than the respondent, the attorneys, or the attorneys' agents involved in the proceeding before the commission. The respondent, the attorneys, or the attorneys' agents involved in the proceeding before the commission shall not disclose any records and papers of the commission concerning any complaint to any third parties unless disclosure is required in the prosecution or defense of disciplinary charges. The confidential records and papers of the commission concerning any complaint shall not be admissible in evidence in a judicial or administrative proceeding other than the formal commission proceeding under rule 36.14.

36.18(4) Every witness in every proceeding under this chapter shall swear or affirm to tell the truth and not to disclose the existence of the proceedings or the identity of the respondent until the proceeding is no longer confidential under these rules.

36.18(5) All communications, papers, and materials concerning any complaint which may come into the hands of a commission member shall remain confidential and the member shall keep the same in a safe and secure place.

36.18(6) The clerk of the commission, the chair, or a member of the commission designated by the chair may issue one or more clarifying announcements when the subject matter of a complaint is of broad public interest and failure to supply information on the status and nature of the formal proceedings could threaten public confidence in the administration of justice. No other member of the

commission shall make any public statement concerning any matter before the commission without prior approval of the commission.

36.18(7) Nothing in this chapter shall prohibit the commission from releasing any information regarding possible criminal violations to appropriate law enforcement authorities, wherever located, to attorney disciplinary and bar admission authorities in other jurisdictions, or any information regarding possible violations of the Iowa Code of Judicial Conduct to the Commission on Judicial Qualifications.

[Court Order April 20, 2005, effective July 1, 2005]

Rules 36.19 and 36.20 Reserved.

Rule 36.21 Forms.**Rule 36.21 — Form 1: *Notice of Complaint.***BEFORE THE GRIEVANCE COMMISSION OF
THE SUPREME COURT OF IOWAIowa Supreme Court
Attorney Disciplinary Board,
Complainant,

vs.

Name, Attorney at Law,
of _____, Iowa,
Respondent.**NOTICE OF COMPLAINT**To _____,
Respondent:

You are notified that there is now on file with the Clerk of the Grievance Commission of the Supreme Court of Iowa at the Iowa Judicial Branch Building, 1111 East Court Avenue, Des Moines, Iowa 50319, a complaint alleging that you have committed unethical practices as an attorney and counselor at law.

A copy of the complaint and copies of chapters 35 and 36 of the Iowa Court Rules are attached and made a part of this notice.

You are further notified to file your written answer to the complaint within 20 days from the completed service of this notice and to abide by any further orders of the commission made in accordance with chapter 36 of the Iowa Court Rules.

You are further notified that the commission will hear this complaint in accordance with the rules and will take action as may be warranted by the facts and circumstances disclosed at the hearing.

Dated this _____ day of _____, 20 ____.

Clerk of the Grievance Commission
Iowa Judicial Branch Building
1111 East Court Avenue
Des Moines, Iowa 50319

[Court Order June 23, 1975; November 20, 1981; June 25, 1987, effective August 3, 1987; December 28, 1989, effective February 15, 1990; December 15, 1994, effective January 3, 1995; February 19, 2001; November 9, 2001, effective February 15, 2002; April 9, 2003; April 20, 2005, effective July 1, 2005]